IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

CRP.No. 1816 of 2001(C)

AGAINST THE ORDER DATED 13.7.2001 IN
OS.199/2001 of SUB COURT, MAVELIKKARA

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REVN. PETITIONER:(PETITIONER/PLAINTIFF)

S.KRISHNAKUMAR
MANGALATHETHU VEEDU
THAMALLACKAL, NORTH MURI
KUMARAPURAM VILLAGE
KARTHIKAPPALLY TALUK

BY ADV. SRI.R.HARIKRISHNAN
SRI.JOHN BRITTO
SRI.C.A.RAJEEV
SMT.A.SINDHULAKSHMY

RESPONDENTS: (COUNTER PETITIONER/DEFENDANT)

L.SOBHANA
A.S.NIVAS, POTHAPPALLY NORTH MURI
KUMARAPURAM VILLAGE,
KARTHIKAPPALLY TALUK

BY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P.NO.3938 OF 2001 IN C.R.P. NO.1816 OF 2001

DISMISSED

22-3-2007 Sd/- M.N.KRISHNAN,JUDGE

TRUE COPY

P.A.TO JUDGE

M.N.KRISHNAN,J

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C.R.P.No.1816 OF 2001

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Dated this the 22nd day of March, 2007

ORDER

This revision is preferred against the order of the Subordinate Judge, Mavelikkara, in O.S.No.199/2001. The plaintiff has filed the suit on the basis of a document and according to him it is a Promissory Note. The court on consideration of the materials found that it is a bond and the plaintiff is liable to pay stamp duty on the basis of a bond and therefore directed him to pay Rs.3842/- as stamp duty and Rs.38420/- as penalty. It is against that decision the present revision is filed. The learned counsel for the revision petitioner strongly contends before me that the disputed document is a Promissory Note and not a bond. I had carefully gone through the document as well as the definition of the bond under Section 2 (a) of the Stamp Act. As per the recitals in the document it is executed by the defendant in favour of the plaintiff. What is recited therein is that an amount of Rs.1,70,000/- is due to the plaintiff from the defendant on account of various financial transactions and that he promises to pay the amount on 21.06.01 and in case there is a default the plaintiff is at liberty to proceed legally for the recovery of the amount. Under Section 2 (a) (ii), bond includes any instrument attested by a witness

and not payable to order or bearer thereby a person obliges himself to pay money to another. A reading of the document in this case would reveal that here the instrument is attested by a witness and it is not payable to order or bearer, thereby the person obliges himself to pay money to another. So, the necessary ingredients to constitute a bond as contemplated under Section 2 (a) (ii) is available in this case. It does not appear to be a Promissory Note. Therefore, the findings of the court below that it requires stamp duty as a bond is only liable to be confirmed.

2. Therefore, the trial court is directed to give three weeks time for the plaintiff to pay the stamp duty and penalty and in case if it is not paid, the court is directed to impound the document to the statutory authority who will be in a position to levy the stamp duty even without imposing the penalty and post the case after few months and on receipt of the impounded document being received back, to proceed with the trial in accordance with law.

The C.R.P. is disposed of accordingly.

M.N.KRISHNAN,JUDGE

dvs